


# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU



## Appendix A ... segment II

### LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2011 LRB-0339 (For: Rep. Mursau)


has been transferred to the drafting file for

**2013 LRB-0056** (For: Rep. Mursau)



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 10/03/2012 (Per: RNK)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



wanted 2/9  
State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0339

RNK:.....

RM run  
PI  
E  
and MGG  
KJ

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

In  
1/19  
see aff'd ✓

D-Note

Gen

1 **AN ACT ...; relating to:** regulation of off-highway vehicles, creating an  
2 off-highway vehicle council, granting rule-making authority, and making  
3 appropriations.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4 **SECTION 1.** 15.347 (8) of the statutes is created to read:

5 15.347 (8) OFF-HIGHWAY VEHICLE COUNCIL. There is created in the department  
6 of natural resources an off-highway vehicle council consisting of 9 members  
7 appointed for 3-year terms who are knowledgeable in the various recreational uses  
8 of off-highway vehicles.

9 **SECTION 2.** 20.370 (1) (mr) of the statutes is created to read:

20.370 (1) (mr) *General program operations — state off-highway vehicle trails.*

From the moneys required to be credited to this appropriation under s. 23.34 (2) (m)

1. the amounts in the schedule for state off-highway vehicle trails.

SECTION 3. 20.370 (3) (at) of the statutes is amended to read:

20.370 (3) (at) *Education and safety programs.* ~~For programs or courses of instruction under ss. 23.33 (5) (d), 23.34 (9) (d), 29.591, 30.74 (1) (a) and 350.055 (1).~~

All moneys remitted to the department under ss. 23.33 (5) (d), 23.34 (9) (d), 29.563

(12) (c) 2., 29.591 (3), 30.74 (1) (b), and 350.055 (1) ~~shall be credited to this~~

~~appropriation.~~ for programs or courses of instruction under ss. 23.33 (5) (d), 23.34 (9) (d), 29.591, 30.74 (1) (a), and 350.055 (1)

History: 1971 c. 40, 95; 1971 c. 125 ss. 101 to 121, 522 (1); 1971 c. 211, 215, 277, 330, 336; 1973 c. 12 s. 37; 1973 c. 90, 100; 1973 c. 243 s. 82; 1973 c. 296, 298, 301, 318, 333, 336; 1975 c. 8, 39, 51, 91, 198; 1975 c. 224 ss. 7d, 7f, 7m, 17 to 19p; 1977 c. 29 ss. 181 to 234, 1657 (34); 1977 c. 274, 370, 374, 376, 377; 1977 c. 418 ss. 95 to 110, 929 (37); 1977 c. 421, 432; 1977 c. 447 ss. 42 to 44, 210; 1979 c. 34 ss. 199 to 322, 2102 (39) (a); 1979 c. 221; 1979 c. 361 s. 113; 1981 c. 1, 20, 86, 95, 131, 294, 330; 1981 c. 374 ss. 6, 7, 148, 150; 1983 a. 27 ss. 216m to 269, 2202 (23); 1983 a. 75, 181, 243, 397; 1983 a. 410 ss. 5m to 11, 2202 (38); 1983 a. 413; 1983 a. 416 ss. 1, 19; 1983 a. 426; 1985 a. 16, 22; 1985 a. 29 ss. 282d to 356, 3202 (26) (a), (39) (a), (c), (dm), (i); 1985 a. 46, 60, 65, 120, 202, 296; 1987 a. 27, 98, 110, 290, 295, 298, 305; 1987 a. 312 s. 17; 1987 a. 384, 397, 399, 403, 418; 1989 a. 31, 128, 284, 288, 326; 1989 a. 335 ss. 22nn to 30g, 89; 1989 a. 336, 350, 359, 366; 1991 a. 32; 1991 a. 39 ss. 326b to 394, 594c; 1991 a. 254, 269, 300, 309, 315; 1993 a. 16, 75, 166, 213, 343, 349, 415, 421, 453, 464; 1993 a. 490 ss. 18, 271; 1995 a. 27, 201, 225, 227, 296, 378, 459; 1997 a. 27, 35; 1997 a. 237 ss. 33 to 38d, 727g; 1997 a. 248; 1999 a. 9, 32, 74, 92; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16, 56, 92, 108, 109; 2003 a. 33, 228, 251, 310, 314, 321, 327; 2005 a. 25, 286, 288, 347, 394; 2007 a. 20, 50, 97; 2009 a. 28, 42, 50, 175, 276, 365, 373.

SECTION 4. 20.370 (3) (au) of the statutes is created to read:

20.370 (3) (au) *Law enforcement — off-highway vehicle enforcement.* From the moneys required to be credited to this appropriation under s. 23.34 (2) (m) 2., the amounts in the schedule for state law enforcement operations related to off-highway vehicles.

SECTION 5. 20.370 (5) (cz) of the statutes is created to read:

20.370 (5) (cz) *Recreation aids — off-highway vehicle project grants.* From the moneys required to be credited to this appropriation under s. 23.34 (2) (m) 3., the amounts in the schedule for grants under s. 23.34 (10).

SECTION 6. 23.34 of the statutes is created to read:

23.34 Off-highway vehicles. (1) DEFINITIONS. In this section:

(a) "All-terrain vehicle" has the meaning given in s. 340.01 (2g).

(ar)

INSERT  
2-20

INSERT  
2-21

1 (b) "Class A off-highway vehicle" means an off-highway vehicle that is eligible  
2 for registration under ch. 341.

3 (c) "Class B off-highway vehicle" means an off-highway vehicle that is exempt  
4 from registration under ch. 341 as provided under s. 341.10 (6) or (6m). INSERT

5 (d) "Law enforcement officer" has the meaning specified under s. 165.85 (2) (c) 3-4  
6 and includes a person appointed as a conservation warden by the department under  
7 s. 23.10 (1).

8 (e) "Motorcycle" has the meaning given in s. 340.01 (32).

9 (f) "Off-highway vehicle" means a 4-wheel drive vehicle that is capable of  
10 cross-country travel on natural terrain without the benefit of a road or trail. An  
11 off-highway vehicle does not include an all-terrain vehicle, a watercraft, a  
12 motorcycle, or a utility terrain vehicle.

13 (g) "Off-highway vehicle club" means a club consisting of individuals that  
14 promotes the recreational use of off-highway vehicles.

15 (h) "Off-highway vehicle dealer" means a person engaged in the sale of  
16 off-highway vehicles for profit at wholesale or retail.

17 (i) "Off-highway vehicle distributor" means a person who sells or distributes  
18 off-highway vehicles to off-highway vehicle dealers or who maintains distributor  
19 representatives.

20 (j) "Off-highway vehicle manufacturer" means a person engaged in the  
21 manufacture of off-highway vehicles for sale to the public.

22 (k) "Off-highway vehicle renter" means a person engaged in the rental or  
23 leasing of off-highway vehicles to the public.

24 (L) "Off-highway vehicle trail" means a marked corridor on public property or  
25 on private lands subject to public easement or lease, designated for use by

1 off-highway vehicle operators by the governmental agency having jurisdiction, but  
2 excluding roadways of highways.

3 (m) "Operate" means to exercise physical control over the speed or direction of  
4 an off-highway vehicle or to physically manipulate or activate any of the controls of  
5 an off-highway vehicle to put it in motion.

6 (n) "Operator" means a person who operates an off-highway vehicle, who is  
7 responsible for the operation of an off-highway vehicle, or who is supervising the  
8 operation of an off-highway vehicle.

9 (o) "Owner" means a person who has lawful possession of an off-highway  
10 vehicle by virtue of legal title or equitable interest in the off-highway vehicle which  
11 entitles the person to possession of the off-highway vehicle.

12 (p) "Registration documentation" means an off-highway vehicle registration  
13 certificate or a registration decal.

14 (q) "Roadway" has the meaning given in s. 340.01 (54).

\*\*\*\*NOTE: Please review this definition to ensure that it meets your intent.

15 (r) "Snowmobile" has the meaning given in s. 340.01 (58a).

16 (s) "Utility terrain vehicle" means a motor driven device, other than a golf cart  
17 or low-speed vehicle, that is designed to be used primarily off of a highway and that  
18 has, and was originally manufactured with, all of the following:

- 19 1. A gross weight of more than 900 pounds but not more than 1,999 pounds.
- 20 2. Four or more low-pressure tires.
- 21 3. A cargo box or dump box.
- 22 4. A steering wheel.
- 23 5. A tail light.
- 24 6. A brake light.

1 7. Two headlights.

2 8. A width of not more than 65 inches.

3 9. Seats for at least 2 occupants, all of which seating is designed not to be  
4 straddled.

5 10. A system of seat belts, or a similar system, for restraining each occupant  
6 of the device in the event of an accident.

7 11. A system of structural members designed to reduce the likelihood that an  
8 occupant would be crushed as the result of a rollover of the device.

9 (2) REGISTRATION. (a) *Requirement*. No person may operate, and no owner may  
10 give another person permission to operate, an off-highway vehicle on an  
11 off-highway vehicle trail unless the off-highway vehicle is registered as required  
12 under this subsection or is exempt from registration under this subsection. No  
13 person under the age of 18 may register an off-highway vehicle under this subsection.

14 (b) *Exemptions*. An off-highway vehicle is exempt from registration under par.  
15 (a) if any of the following applies:

16 1. It is a farm vehicle being used for farming.

17 2. It is owned by a political subdivision of the state and used for enforcement  
18 or emergency purposes. *this state or this*

19 3. It is a construction or logging vehicle that is used to perform functions related  
20 to construction or logging, respectively.

21 4. It is owned or operated under contract with a utility and operated for the  
22 purpose of utility work.

23 5. It is owned by the the United States, another state, or a political subdivision  
24 of that state.

25 6. It is a commercial vehicle, as defined in s. 340.01 (8).

\*\*\*\*NOTE: Please review this definition to determine if it meets your intent.

7. It is snow grooming equipment and is being operated for snow grooming purposes.

\*\*\*\*NOTE: I question why any of these exemptions are necessary given that an OHV must be registered only if it is being operated on an OHV trail. For example, why would a farm vehicle used for farming purposes be operated on an OHV trail?

(c) *Registration; Class A; fee.* The fee for issuance or renewal of a registration certificate for a Class A off-highway vehicle is \$50.

(d) *Registration; Class B; fee.* The fee for issuance or renewal of a registration certificate for a Class B off-highway vehicle is \$100.

(e) *Registration; commercial owner; fee.* 1. Every person who is an off-highway vehicle manufacturer, off-highway vehicle dealer, off-highway vehicle distributor, or off-highway vehicle renter or any combination thereof engaged in business in this state shall register with the department and obtain from the department a commercial off-highway vehicle certificate.

2. The fee for the issuance or renewal of a commercial off-highway vehicle certificate is \$50 except that the fee for the issuance or renewal of a commercial off-highway vehicle certificate to a manufacturer is \$150.

\*\*\*\*NOTE: Are these commercial registration fee provisions consistent with your intent?

(f) *Other fees.* The fee for the issuance of a duplicate off-highway vehicle registration certificate or decal and the fee for transfer of an off-highway vehicle registration certificate is \$5.

(g) *Effective period.* An off-highway vehicle registration certificate is valid for a <sup>one</sup> 1-year period.

1 (h) *Registration; issuers.* For the issuance of original or duplicate registration  
2 documentation and for the transfer or renewal of registration documentation, the  
3 department<sup>✓</sup> may do any of the following:

4 1. Directly issue, transfer, or renew the registration documentation with or  
5 without using the service specified in par. (j) 1.

6 2. Appoint persons who are not employees of the department<sup>✓</sup> as agents of the  
7 department<sup>✓</sup> to issue, transfer, or renew the registration documentation using either  
8 or both of the services specified in par. (j) 1.

9 (i) *Registration; required information.* The department<sup>✓</sup> may not issue a  
10 registration certificate under this subsection<sup>✓</sup> for an off-highway vehicle unless the  
11 application for the registration certificate includes the name and address of every  
12 owner of the off-highway vehicle.

13 (j) *Registration; methods of issuance.* 1. For the issuance of original or  
14 duplicate registration documentation and for the transfer or renewal of registration  
15 documentation, the department<sup>✓</sup> may implement either or both of the following  
16 procedures to be provided by the department<sup>✓</sup> and any agents appointed under par.

17 (i) 3.: (h) 2.

18 a. A procedure under which the department<sup>✓</sup> or an agent appointed under par.  
19 (h) 2. accepts applications for registration documentation and issues<sup>S</sup> a validated  
20 registration receipt at the time the applicant submits the application accompanied  
21 by the required fees.

22 b. A procedure under which the department<sup>✓</sup> or agent may accept applications  
23 for registration documentation and issue to each applicant all or some of the items  
24 of the registration documentation at the time the applicant submits the application  
25 accompanied by the required fees.



2. Under either procedure under subd. 1., the applicant shall receive any remaining items of registration documentation directly from the department at a later date. The items of registration documentation issued at the time of the submittal of the application under either procedure shall be sufficient to allow the off-highway vehicle for which the application is submitted to be operated in compliance with the registration requirements under this subsection. The items of registration documentation issued under subd. 1. b. shall include at least one registration decal.

(k) *Registration; supplemental fees.* 1. In addition to the applicable fee under par. (c), (d), or (f), each agent appointed under par. (h) 2. shall collect a service fee of \$3 each time the agent issues a validated registration receipt under par. (j) 1. a. The agent shall retain the entire amount of each service fee the agent collects.

2. In addition to the applicable fee under par. (c), (d), or (f), the department or the agent appointed under par. (h) 2. shall collect a service fee of \$5 each time the service under par. (j) 1. b. is provided. The agent shall remit to the department \$1 of each service fee the agent collects.

(L) *Display.* A person who is issued a registration decal under par. (j) shall affix the decal to the registered off-highway vehicle in such a manner that it may not be removed. The registration decal shall be displayed on the windshield of a registered Class A off-highway vehicle on the upper right passenger side. The registration decal shall be displayed within 2 inches of the right rear brake light on a registered Class B off-highway vehicle.

(m) *Receipt of fees.* All fees remitted to or collected by the department under this subsection shall be ~~deposited in the conservation fund and~~ credited to the following appropriation accounts ~~in the following manner:~~

*Use (E)*  
~~at the amount credited~~ From the amounts appropriated under s. 20.370(1)(iw), the department shall expend *under s. 20.370(1)(iw).* insert 8-25

1 1. One-third shall be credited to the appropriation account under s. 20.370 (1)  
2 (mr).

3 2. One-third shall be credited to the appropriation account under s. 20.370 (3)  
4 (au).

5 3. One-third shall be credited to the appropriation account under s. 20.370 (5)  
6 (cz).

7 (n) *Rules*. The department may establish by rule additional procedures and  
8 requirements for off-highway vehicle registration.

9 (3) DUTIES OF THE OFF-HIGHWAY VEHICLE COUNCIL. (a) The department shall  
10 distribute any rule that it is proposing and that affects the operation of off-highway  
11 vehicles to each member of the off-highway vehicle council for his or her review and  
12 comment at least 20 days before the notice stating that the proposed rule is in final  
13 draft form<sup>and</sup> is submitted to the legislature in the manner provided under s. 227.19 (2).

14 A member of the off-highway<sup>vehicle</sup> council may submit his or her written comments on the  
15 proposed rule to the department.

16 (b) 1. Before June 30 of each even-numbered year, the department shall  
17 consult with the off-highway vehicle council on the proposed changes for the  
18 succeeding biennium in the appropriations and laws that affect off-highway vehicles  
19 or the operation of off-highway vehicles.

20 2. A member of the off-highway vehicle council may submit before August 1 of  
21 the even-numbered year his or her written comments on the proposed changes  
22 specified in subd. 1. to the secretary of natural resources.

23 (c) The secretary of natural resources shall submit any written comments that  
24 the secretary receives under par. (b) 2. to the natural resources board and to the

1 secretary of administration with the department's submission of its budget report  
2 under s. 16.42.

3 (d) Before March 1 of each odd-numbered year, the off-highway vehicle council  
4 shall meet and review the provisions that are included in the executive bill or bills  
5 and that affect off-highway vehicles or the operation of off-highway vehicles. A  
6 member of the off-highway vehicle council may submit his or her written comments  
7 on these provisions to the secretary of natural resources before March 10 of each  
8 odd-numbered year.

9 (e) The secretary shall submit the written comments that he or she receives  
10 under par (a) 2. or (d) before March 10 of the odd-numbered year to the  
11 cochairpersons of the joint committee on finance before March 15 of that  
12 odd-numbered year.

\*\*\*\*NOTE: These provisions are based on the snowmobile council provisions. Do  
they meet your intent?

13 (4) OPERATION OF OFF-HIGHWAY VEHICLES. (a) *Operator's license required.* No  
14 person may operate an off-highway vehicle unless the person possesses a valid  
15 operator's license issued under ch. 343.

16 (b) ~~General Restrictions.~~ No person may operate an off-highway vehicle in the  
17 following manner:

18 1. On public property that is ~~not~~ posted as open to the operation of off-highway  
19 vehicles.

20 2. On the private property of another without the consent of the owner or lessee.  
21 Failure to post private property does not imply consent for off-highway vehicle use.

22 3. In a willful or wanton manner, or with reckless disregard for the safety of  
23 persons or property.

NOTE: This standard is different than the standard under the ATV law, see s. 23.33 (3) (a), stats. You may wish to change the standard so that it is consistent with the ATV law.

4. On Indian lands without the consent of the tribal governing body or Indian owner. Failure to post Indian lands does not imply consent for off-highway vehicle use.

5. With any firearm in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case.

6. To drive or pursue any animal except as part of normal farming operations involving the driving of livestock.

7. Except as provided in subds 8. and 9. at a speed exceeding 20 miles per hour.

8. When within 150 feet of a dwelling, at a speed exceeding 10 miles per hour.

9. On the frozen surface of public waters within 100 feet of a person not in or on an off-highway vehicle or motor vehicle, attending or participating in an event, or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

10. In a manner that violates rules promulgated by the department.

(c) *Restrictions on public land; department requirements.* 1. No person may operate an off-highway vehicle on land under the jurisdiction or control of the department, or in a county forest, as defined in s. 28.11 (2), except on trails designated by the department, by posted notice, as open for use by off-highway vehicles.

2. The department shall establish seasons during which a person may operate an off-highway vehicle on designated trails in state forest lands.

3. The department shall prepare maps that identify each off-highway vehicle trail in this state.

X \*\*\*\*NOTE: Do you want to establish a deadline by which DNR must prepare the maps? Should DNR be required to make the maps available on the DNR website or make them available in some other manner? / Δ

INSECT

12-1

1 (5) EQUIPMENT REQUIREMENTS. No person may operate a Class B off-highway  
2 vehicle unless it meets all of the following requirements:

3 (a) It has a minimum of 4 wheels and is propelled by those wheels using an  
4 electric or internal combustion engine.

5 (b) If it is equipped with an internal combustion engine, it has a complete  
6 exhaust system that includes a muffler and a tail pipe.

7 (c) It has a permanently mounted and attached fuel cell or tank.

8 (d) It has a frame mounted roll cage that is constructed in a manner specified  
9 by the department by rule and that encloses the operator and each passenger.

10 (e) It has a permanently affixed blaze orange safety flag that is at least 144  
11 square inches in size and that is displayed at least 8 feet above the ground on the  
12 front passenger side of the off-highway vehicle.

\*\*\*\*NOTE: Isn't it possible that an off-highway vehicle could be less than 8 feet above the ground?

13 (f) It has 2 functioning head lights.

14 (g) It has 2 functioning brake lights.

15 (h) It has functioning front and rear turn signals.

16 (i) It has functioning side markers on the front and rear driver and passenger  
17 sides.

18 (j) All of the seats are permanently mounted and equipped with shoulder and  
19 lap safety belts.

20 (k) It does not contain an infant or child seat.

21 (L) It is equipped with an unopened spill kit approved by the Wisconsin  
22 Off-Highway Vehicle Association.

\*\*\*\*NOTE: The term "spill kit" should be defined.

1 (m) It has a battery that is permanently secured in the vehicle.

\*\*\*\*NOTE: This provision seems to suggest that the battery in the vehicle cannot be replaced. Is this correct?

2 (6) NOISE LIMITS. No person may manufacture, sell, rent, or operate an  
3 off-highway vehicle that is constructed in such a manner that noise emitted from the  
4 off-highway vehicle exceeds 96 decibels on the A scale as measured in the manner  
5 prescribed under rules promulgated by the department.

\*\*\*\*NOTE: This provision is based on the ATV noise limits. O.K.?

6 (7) ACCIDENTS. If an accident results in the death of any person, in the injury  
7 of any person that requires the treatment of the person by a physician, or in property  
8 damage of \$500 or more, the operator of each off-highway vehicle involved in the  
9 accident shall, within 10 days of the date of the accident, provide a report of the  
10 accident to the department in the form and manner required by the department by  
11 rule.

12 (8) TRAILS. (a) *Department authority*. The department shall encourage and  
13 supervise a system of off-highway vehicle trails. The department may establish  
14 standards and procedures for certifying the designation of off-highway vehicle  
15 trails.

16 (b) *Designation*. A town, village, city, county, or the department may designate  
17 corridors through land which it owns or controls, or for which it obtains leases,  
18 easements, or permission, for use as off-highway vehicle trails.

19 (c) *Restrictions*. The designating authority may specify effective periods for the  
20 use of off-highway vehicle trails and may restrict or prohibit the operation of an  
21 off-highway vehicle during certain periods of the year.

1 (d) *Signs.* The department, in cooperation with the department of  
2 transportation, shall establish uniform off-highway vehicle trail signs and  
3 standards.

4 (e) *Interference with signs and standards prohibited.* 1. No person may  
5 intentionally remove, damage, deface, move, or obstruct any uniform off-highway  
6 vehicle trail sign or standard or intentionally interfere with the effective operation  
7 of any uniform off-highway vehicle trail sign or standard if the sign or standard is  
8 legally placed by the state, any municipality, or any authorized individual.

9 2. No person may possess any uniform off-highway vehicle trail sign or  
10 standard of the type established by the department for the warning, instruction, or  
11 information of the public, unless he or she obtained the uniform off-highway vehicle  
12 trail sign or standard in a lawful manner. Possession of a uniform off-highway  
13 vehicle trail sign or standard creates a rebuttable presumption of illegal possession.

14 (9) AGE RESTRICTIONS FOR OPERATION; SAFETY CERTIFICATE REQUIREMENTS. (a) No  
15 person under the age of 16 may operate an off-highway vehicle on an off-highway  
16 vehicle trail.

17 (b) No person who is 16 or 17 years of age may do any of the following:

18 1. Operate an off-highway vehicle on an off-highway vehicle trail without  
19 wearing protective headgear of the type required under s. 347.485 (1) (a) and with  
20 the chin strap properly fastened.

21 2. Operate an off-highway vehicle on an off-highway vehicle trail unless he or  
22 she is accompanied by another off-highway vehicle that is operated by a person who  
23 is at least 18 years of age.

\*\*\*\*NOTE: What does "accompanied" mean in this context? For example, see  
s. 23.33(1)(a) and (5)(a).

1

(c) No person who is born on or after December 31, 1993, may operate an off-highway vehicle on an off-highway vehicle trail unless he or she holds a valid

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safety certificate *issued under par. (d)*

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(d) The department shall establish or supervise the establishment of a program

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of instruction on off-highway vehicle laws, including the intoxicated operation of an

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off-highway vehicle law, regulations, safety, and related subjects. The department

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shall establish by rule an instruction fee for this program. The department shall

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issue certificates to persons successfully completing the program. An instructor

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conducting the program of instruction under this paragraph shall collect the fee from

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each person who receives instruction. The department may determine the portion

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of this fee, which may not exceed 50% *one percent*, that the instructor may retain to defray

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expenses incurred by the instructor in conducting the program. The instructor shall

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remit the remainder of the fee or, if nothing is retained, the entire fee to the

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department. The department shall issue a duplicate certificate of accomplishment

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to a person who is entitled to a duplicate certificate of accomplishment and who pays

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a fee of \$5.

17

(10) GRANT PROGRAM. (a) The department shall establish a program to award

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grants to organizations that meet the eligibility requirements under par. (b).

19

(b) To be eligible for a grant under this subsection, an organization shall meet

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all of the following requirements:

21

1. The organization is a nonstock corporation organized in this state.

22

2. The organization promotes the operation of off-highway vehicles in a

23

manner that is safe and responsible and that does not harm the environment.



1           3. The organization promotes the operation of off-highway vehicles in a  
2 manner that does not conflict with the laws, rules, and departmental policies that  
3 relate to the operation of off-highway vehicles.

4           4. The interest of the organization is limited to the recreational operation of  
5 off-highway vehicles on off-highway vehicle trails and other areas that are off of the  
6 highways.

7           5. The organization has a board of directors that has a majority of members who  
8 are representatives of off-highway vehicle clubs.

9           6. The organization provides support to off-highway vehicle clubs.

10           (c) An organization receiving a grant under this subsection shall use the grant  
11 moneys to promote and provide support to the program established under sub. (9) (d)  
12 by conducting activities that include all of the following:

13           1. Collecting data on the recreational operation of off-highway vehicles off of  
14 the highways.

15           2. Providing assistance to the department in locating, recruiting, and training  
16 instructors for the program established under sub. (9) (d).

17           3. Attempting to increase participation by current and future off-highway  
18 vehicle operators and owners in the program established under sub. (9) (d).

19           4. In consultation with the department of natural resources and the  
20 department of tourism, creating an outreach program to inform local communities  
21 of appropriate off-highway vehicle use in their communities and of the economic  
22 benefits that may be gained from promoting tourism to attract off-highway vehicle  
23 operators.

24           5. Attempting to improve and maintain its relationship with the department  
25 of natural resources, the department of tourism, off-highway vehicle dealers,

NO SCORING  
1 off-highway vehicle manufacturers, all-terrain vehicle clubs, as defined in s. 23.33  
2 (1) (bc), snowmobile clubs, as defined in s. 350.138 (1) (e), snowmobile alliances, as  
3 defined in s. 350.138 (1) (d), and other organizations that promote the recreational  
4 operation of all-terrain vehicles and snowmobiles.

5 6. Recruiting, assisting in the training of, and providing support to a corps of  
6 volunteers that will assist in providing instruction on the safe and responsible  
7 operation of off-highway vehicles that is given in the field to off-highway vehicle  
8 operators.

9 7. Publishing a manual in cooperation with the department to be used to train  
10 volunteers in monitoring the recreational operation of off-highway vehicles for  
11 safety issues and other issues that relate to the responsible operation of off-highway  
12 vehicles.

13 (d) The department shall pay the grants from the appropriation under s. 20.370  
14 (5) (cz).

15 (11) DAMAGE CLAIM PROGRAM. The department shall establish, by rule, a  
16 program to pay claims to owners of property damaged by the unauthorized operation  
17 of off-highway vehicles. The rules shall specify eligibility requirements and  
18 procedures for obtaining a payment under the program. The department shall make  
19 payments under this subsection from the appropriation under s. 20.370 (?) (?).

\*\*\*\*NOTE: How should this program be funded?

20 (12) LOCAL ORDINANCES. (a) Counties, towns, cities, and villages may enact  
21 ordinances regulating off-highway vehicles on off-highway vehicle trails  
22 maintained or designated by the county, city, town, or village.

(b) Any county, town, city, or village may enact an ordinance that is in strict conformity with this section and rules promulgated by the department under this section if the ordinance encompasses all aspects encompassed by this section.

(13) ENFORCEMENT. (a) An officer of the state traffic patrol under s. 110.07 (1), inspector under s. 110.07 (3), conservation warden appointed by the department under s. 23.10, county sheriff, or municipal peace officer has authority and jurisdiction to enforce this section and ordinances enacted in accordance with this section.

(b) No operator of an off-highway vehicle required to be registered under this section may refuse to stop after being requested or signaled to do so by a law enforcement officer or a commission warden, as defined in s. 939.22 (5).

(14) PENALTIES. (a) <sup>General penalties. (I)</sup> Any person who violates this section shall forfeit not less than \$250 for a first violation, not less than \$500 for a <sup>2nd</sup> second violation, and not less than \$1,000 for a <sup>3rd</sup> third or subsequent violation.

\*\*\*NOTE: These penalties should also include a maximum amount for each violation. Also, do you want to specify that for the purpose of "counting" a violation, the later violation must have been committed within a specified period after the previous violation was committed?

(b) *Safety certificate requirement.* In addition to the penalties under par. (a) the court shall require any person who violates this section to successfully complete the program of instruction on off-highway vehicle laws established by the department under sub. (9) (d) regardless of whether the person has previously successfully completed the program.

(c) *Restoration or replacement of signs and standards.* In addition to any other penalty, the court may order the defendant to restore or replace any uniform off-highway vehicle trail sign or standard that the defendant removed, damaged, defaced, moved, or obstructed.

1           **SECTION 7.** 23.45 (1) (d) of the statutes is amended to read:

2           23.45 (1) (d) "Registration" means any registration documentation, as defined  
3           in s. 23.33 (1) (jn), 23.34 (1) (p), or s. 350.01 (10t), or certification or registration  
4           documentation, as defined in s. 30.50 (3b), issued by the department or its agents.

History: 1999 a. 88, 186; 2001 a. 16.

5           **SECTION 8.** 23.53 (1) of the statutes is amended to read:

6           23.53 (1) The citation created under this section shall, in all actions to recover  
7           forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of  
8           those statutes enumerated in s. 23.50 (1), any administrative rules promulgated  
9           thereunder, and any rule of the Kickapoo reserve management board under s. 41.41  
10          (7) (k) be used by any law enforcement officer with authority to enforce those laws,  
11          except that the uniform traffic citation created under s. 345.11 may be used by a  
12          traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law  
13          enforcement agency of a municipality or county or a traffic officer employed under  
14          s. 110.07 in enforcing s. 287.81. In accordance with s. 345.11 (1m), the citation shall  
15          not be used for violations of ch. 350 relating to highway use. The citation may be used  
16          for violations of local ordinances enacted by any local authority in accordance with  
17          s. 23.33 (11) (am), s. 23.34 (12), or 30.77.

History: 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4; 1989 a. 335; 1991 a. 39; 1993 a. 349; 1995 a. 27, 216, 227; 1997 a. 35; 2003 a. 139.

18          **SECTION 9.** 23.56 (1) of the statutes is amended to read:

19          23.56 (1) A person may be arrested for a violation of those statutes enumerated  
20          in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the  
21          Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances  
22          enacted by any local authority in accordance with s. 23.33 (11) (am), s. 23.34 (12), or  
23          30.77, after a warrant that substantially complies with s. 968.04 has been issued.

1 Except as provided in sub. (2), the person arrested shall be brought without  
2 unreasonable delay before a court having jurisdiction to try the action.

History: 1975 c. 365; 1977 c. 29; 1979 c. 34; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4; 1991 a. 39; 1993 a. 349; 1995 a. 27, 216; 2003 a. 139.

3 **SECTION 10.** 23.57 (1) (intro.) of the statutes is amended to read:

4 23.57 (1) (intro.) A person may be arrested without a warrant when the  
5 arresting officer has probable cause to believe that the person is committing or has  
6 committed a violation of those statutes enumerated in s. 23.50 (1), any  
7 administrative rules promulgated thereunder, any rule of the Kickapoo reserve  
8 management board under s. 41.41 (7) (k), or any local ordinances enacted by any local  
9 authority in accordance with s. 23.33 (11) (am), s. 23.34 (12), or 30.77; and:

History: 1975 c. 365; 1987 a. 200 s. 4; 1993 a. 349; 1995 a. 27, 216.

10 **SECTION 11.** 23.58 of the statutes is amended to read:

11 **23.58 Temporary questioning without arrest.** After having identified  
12 himself or herself as an enforcing officer, an enforcing officer may stop a person in  
13 a public place for a reasonable period of time when the officer reasonably suspects  
14 that such person is committing, is about to commit or has committed a violation of  
15 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated  
16 thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7)  
17 (k), or any local ordinances enacted by any local authority in accordance with s. 23.33  
18 (11) (am), s. 23.34 (12), or 30.77. Such a stop may be made only where the enforcing  
19 officer has proper authority to make an arrest for such a violation. The officer may  
20 demand the name and address of the person and an explanation of the person's  
21 conduct. Such detention and temporary questioning shall be conducted in the  
22 vicinity where the person was stopped.

History: 1975 c. 365; 1987 a. 200 s. 4; 1993 a. 349; 1995 a. 27, 216.

23 **SECTION 12.** 23.62 (1) (intro.) of the statutes is amended to read:

23.62 (1) (intro.) Whenever an enforcing officer has probable cause to believe that a person subject to his or her authority is committing or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am), s. 23.34 (12), or 30.77, the officer may proceed in the following manner:

History: 1975 c. 365; 1979 c. 175; 1987 a. 200 s. 4; 1993 a. 156, 349; 1995 a. 27, 216; 2005 a. 282.

**SECTION 13.** 30.26 (4) (a) (intro.) of the statutes is amended to read:

30.26 (4) (a) (intro.) The department may not prohibit the crossing of a bridge over a wild river by an all-terrain vehicle traveling on an all-terrain vehicle trail, as defined under s. 23.33 (1) (d), by an off-highway vehicle traveling on an off-highway vehicle trail, as defined under s. 23.34 (1) (L), or by a snowmobile traveling on a snowmobile trail, as defined under s. 350.01 (17) that is constructed in any of the following locations:

History: 2003 a. 248; 2009 a. 7, 32, 276.

**SECTION 14.** 30.26 (4) (b) of the statutes is amended to read:

30.26 (4) (b) The state shall permit all-terrain vehicles and snowmobiles to travel in a corridor across any state land that separates an all-terrain vehicle trail or a snowmobile trail and the bridges constructed at the locations listed under par. (a).

History: 2003 a. 248; 2009 a. 7, 32, 276.

\*\*\*\*NOTE: Do you want to amend this provision to include off-highway vehicles?

**SECTION 15.** 78.01 (2) (e) of the statutes is amended to read:

78.01 (2) (e) Gasoline sold for nonhighway use in mobile machinery and equipment; other than use in a snowmobile, an all-terrain vehicle that is not registered for private use under s. 23.33 (2) (d), a Class B off-highway vehicle

✓  
1 registered under s. 23.34, or a recreational motorboat; and delivered directly into the  
2 consumer's storage tank in an amount of not less than 100 gallons.

**History:** 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 153; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 316; 1993 a. 16, 437; 1995 a. 113; 1997 a. 27, 237; 2009 a. 401.

3 **SECTION 16.** 78.01 (2m) (f) of the statutes is amended to read:

4 78.01 (2m) (f) It is dyed diesel fuel and is sold for off-highway use other than  
5 use in a snowmobile, an all-terrain vehicle that is not registered for private use  
6 under s. 23.33 (2) (d) or (2g), a Class B off-highway vehicle registered under s. 23.34,  
7 or in a recreational motorboat or if no claim for a refund for the tax on the diesel fuel  
8 may be made under s. 78.75 (1m) (a) 3.

**History:** 1979 c. 221; 1981 c. 20; 1983 a. 27; 1985 a. 153; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31; 1991 a. 39, 316; 1993 a. 16, 437; 1995 a. 113; 1997 a. 27, 237; 2009 a. 401.

9 **SECTION 17.** 78.40 (1) of the statutes is amended to read:

10 78.40 (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax at the rate  
11 determined under ss. 78.405 and 78.407 is imposed on the use of alternate fuels. The  
12 tax, with respect to all alternate fuel delivered by an alternate fuel dealer into supply  
13 tanks of motor vehicles in this state, attaches at the time of delivery and shall be  
14 collected by the dealer from the alternate fuels user and shall be paid to the  
15 department. The tax, with respect to alternate fuels acquired by any alternate fuels  
16 user other than by delivery by an alternate fuel dealer into a fuel supply tank of a  
17 motor vehicle, or of a snowmobile, an all-terrain vehicle that is not registered for  
18 private use under s. 23.33 (2) (d) or (2g), a Class B off-highway vehicle registered  
19 under s. 23.34, or a recreational motorboat, attaches at the time of the use of the fuel  
20 and shall be paid to the department by the user. The department may permit any  
21 supplier of alternate fuels to report and pay to the department the tax on alternate

1 fuels delivered into the storage facility of an alternate fuels user or retailer which will  
2 be consumed for alternate fuels tax purposes or sold at retail.

**History:** 1979 c. 11, 221; 1981 c. 20; 1983 a. 27; 1985 a. 302; 1987 a. 27; 1987 a. 312 s. 17; 1991 a. 39; 1993 a. 16; 1995 a. 113; 1997 a. 27.

**History:** 1973 c. 33; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 s. 329 (33); 1985 a. 29; 1987 a. 27; 1989 a. 31; 1993 a. 16, 437; 1995 a. 113, 408; 1997 a. 27, 291.

3 **SECTION 18.** 110.07 (1) (a) 1. of the statutes is amended to read:

4 110.07 (1) (a) 1. Enforce and assist in the administration of this chapter and  
5 chs. 194, 218, 341 to 349 and 351, and ss. 23.33, 23.34, 125.07 (4) (b), 125.085 (3) (b),  
6 167.31 (2) (b) to (d) and 287.81 and ch. 350 where applicable to highways, or orders  
7 or rules issued pursuant thereto.

**History:** 1971 c. 40, 125; 1973 c. 90, 146; 1975 c. 297; 1977 c. 29 ss. 1048, 1654 (7) (a), (c), 1656 (43); 1977 c. 305 s. 64; 1977 c. 418; 1979 c. 221; 1979 c. 333 s. 5; 1979 c. 361 s. 113; 1981 c. 96 s. 67; 1981 c. 390; 1983 a. 27; 1983 a. 175 s. 33; 1983 a. 191 s. 6; 1985 a. 29, 36, 63, 332; 1987 a. 332 s. 64; 1989 a. 31, 167, 170, 240, 335, 359; 1993 a. 25; 1995 a. 201, 227, 341; 1999 a. 9, 85; 2001 a. 68, 109; 2009 a. 42.

8 **SECTION 19.** 110.07 (3) of the statutes is amended to read:

9 110.07 (3) The secretary may employ inspectors who may not wear the uniform  
10 of the state patrol, whose duties shall be to enforce and assist in administering s.  
11 346.63, this chapter and chs. 194, 218, 340 to 345 and 347 to 351, ~~ss. 23.33, and~~  
12 23.34, the inspection requirements of s. 121.555 (2) (b) and the requirements under  
13 s. 346.45 (4) for vehicles being used to transport hazardous materials. Such  
14 inspectors, in the performance of these duties, shall have the powers and authority  
15 of state traffic officers. For the purpose of death, disability and retirement coverage,  
16 such inspectors shall be subject to ch. 40 as is the state traffic patrol. Subject to sub.  
17 (5), the secretary may clothe and equip inspectors as the interest of public safety and  
18 their duties require.

**History:** 1971 c. 40, 125; 1973 c. 90, 146; 1975 c. 297; 1977 c. 29 ss. 1048, 1654 (7) (a), (c), 1656 (43); 1977 c. 305 s. 64; 1977 c. 418; 1979 c. 221; 1979 c. 333 s. 5; 1979 c. 361 s. 113; 1981 c. 96 s. 67; 1981 c. 390; 1983 a. 27; 1983 a. 175 s. 33; 1983 a. 191 s. 6; 1985 a. 29, 36, 63, 332; 1987 a. 332 s. 64; 1989 a. 31, 167, 170, 240, 335, 359; 1993 a. 25; 1995 a. 201, 227, 341; 1999 a. 9, 85; 2001 a. 68, 109; 2009 a. 42.

19 **SECTION 20.** 322.111 of the statutes is amended to read:

20 **322.111 Article 111 — Drunken or reckless operation of an all-terrain**  
21 **vehicle, vehicle, snowmobile, aircraft, or vessel.** Any person who violates s.  
22 23.33 (3) (a) or (4c), 23.34 (4) (a), 30.68, 30.681, 114.09, 346.62, 346.63 (1) or (2),

off-highway vehicle,

or (4c)



350.10 (1) (b), 350.101, 940.25, or 940.09 where the offense involved the operation or physical control of an aircraft, all-terrain vehicle, off-highway vehicle, snowmobile, vehicle or vessel on or off a highway shall be punished as the court-martial may direct.

History: 2007 a. 200.

**SECTION 21.** 340.01 (intro.) of the statutes is amended to read:

**340.01 Words and phrases defined.** (intro.) In ~~s. 23.33~~ <sup>ss.</sup> 23.33, 23.34 and chs. 340 to 349 and 351, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

**History:** 1971 c. 100 s. 23; 1971 c. 201, 211, 233, 277, 307; 1973 c. 86, 157, 182, 185, 272, 333, 335; 1973 c. 336 s. 79; 1975 c. 25, 120, 121, 136, 192, 199, 320, 326; 1975 c. 429 ss. 2m, 2r, 3, 4, 8, 9; 1977 c. 5; 1977 c. 29 ss. 1405 to 1410, 1654 (3); 1977 c. 30 s. 5; 1977 c. 43, 55, 57, 116, 193, 272, 288, 418; 1979 c. 36, 221; 1979 c. 333 s. 5; 1979 c. 345; 1981 c. 20, 159, 329; 1983 a. 27, 78, 124, 130, 175; 1983 a. 189 ss. 249, 329 (17m), (24); 1983 a. 223, 227, 243, 270, 457, 459; 1983 a. 512 s. 8; 1983 a. 538; 1985 a. 29, 65; 1985 a. 146 s. 8; 1985 a. 165, 187, 287; 1987 a. 259, 270, 349, 399; 1989 a. 31; 1989 a. 75 s. 1; 1989 a. 102; 1989 a. 105 ss. 13 to 30, 37, 41, 42; 1989 a. 134, 170; 1991 a. 39, 239, 269, 277, 316; 1993 a. 15, 16, 63, 159, 198, 213, 246, 260, 399, 436, 490; 1995 a. 27 s. 9145 (1); 1995 a. 36, 77, 113, 138, 225, 436, 448; 1997 a. 27, 164, 252, 277; 1999 a. 9, 31, 80, 85, 109, 140; 2001 a. 10, 16, 90, 102, 105, 109; 2003 a. 30, 33, 97, 192, 320, 321; 2005 a. 455; 2007 a. 11; 2007 a. 20 ss. 3190m, 3190p, 3220c; 2007 a. 27; 2007 a. 33 s. 8; 2007 a. 130, 175; 2009 a. 85, 97, 100, 122, 177, 311, 320.

**SECTION 22.** 341.059 of the statutes is created to read:

**341.059 Off-highway vehicles.** Class B off-highway vehicles, as defined in s. 23.34 (1) (c), are not required to be registered under this chapter but shall be registered under s. 23.34 (2).

**SECTION 23.** 345.11 (1r) of the statutes is amended to read:

**345.11 (1r)** The uniform traffic citation or the citation form under s. 23.54 shall be used for violations of ~~s. ss. 23.33~~ and 23.34 relating to highway use or ordinances enacted in accordance with that section if the violation is committed on a highway, but no points may be assessed against the driving record of the operator of an all-terrain vehicle. When the uniform traffic citation is used, the report of conviction shall be forwarded to the department. When the citation form under s. 23.54 is used, the procedure in ss. 23.50 to 23.85 applies.

**History:** 1971 c. 164 s. 81; 1971 c. 277; 1973 c. 218; 1975 c. 41; 1977 c. 29 ss. 1468, 1654 (7) (a), (c); 1977 c. 273; 1979 c. 34, 257; 1985 a. 29, 36, 145, 309; 1989 a. 31, 105, 170, 335; 1993 a. 436, 437; 1995 a. 227; 1997 a. 120; 1999 a. 31, 140; 2001 a. 27; 2003 a. 33; 2009 a. 55, 367.

**SECTION 24.** 800.02 (2) (b) of the statutes is amended to read:

800.02 (2) (b) Except for parking violations, in traffic regulation actions in municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu of the citation form specified in par. (ag). In actions for violations of local ordinances enacted in accordance with s. 23.33 (11) (am), s. 23.34 (12), or 30.77, the citation form specified in s. 23.54 shall be used in lieu of the citation form specified in par. (ag).

History: 1977 c. 305; 1979 c. 22; 1979 c. 32 s. 68; 1979 c. 266; Stats. 1979 s. 800.02; 1981 c. 317; 1983 a. 535; 1987 a. 27; 1987 a. 200 s. 4; 1987 a. 389; 1989 a. 170; 1991 a. 39, 40; 1993 a. 16, 112, 320, 437; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139; 2009 a. 402.

**SECTION 25.** 895.049 of the statutes is amended to read:

**895.049 Recovery by a person who fails to use protective headgear while operating certain motor vehicles.** Notwithstanding s. 895.045, failure by a person who operates or is a passenger on a motorcycle, as defined in s. 340.01 (32), an all-terrain vehicle, as defined in s. 340.01 (2g), or a snowmobile, as defined in s. 340.01 (58a), on or off a highway, to use protective headgear shall not reduce recovery for injuries or damages by the person or the person's legal representative in any civil action. This section does not apply to any person required to wear protective headgear under s. 23.33 (3g), 23.34 (9) (b) 1., or 347.485 (1).

History: 2003 a. 148.

**SECTION 26.** 901.053 of the statutes is amended to read:

**901.053 Admissibility of evidence relating to use of protective headgear while operating certain motor vehicles.** Evidence of use or nonuse of protective headgear by a person, other than a person required to wear protective headgear under s. 23.33 (3g), 23.34 (9) (b) 1., or 347.485 (1), who operates or is a passenger on a motorcycle, as defined in s. 340.01 (32), an all-terrain vehicle, as defined in s. 340.01 (2g), an off-highway vehicle, as defined in s. 23.34 (1) (f), or a snowmobile, as defined in s. 340.01 (58a), on or off a highway, is not admissible in any civil action for personal injury or property damage. This section does not apply to the introduction of such evidence in a civil action against the manufacturer or

1 producer of the protective headgear arising out of any alleged deficiency or defect in  
2 the design or manufacture of the protective headgear or, with respect to such use of  
3 protective headgear, in a civil action on the sole issue of whether the protective  
4 headgear contributed to the personal injury or property damage incurred by another  
5 person.

History: 2003 a. 148.

6 **SECTION 27.** 938.17 (1) (intro.) of the statutes is amended to read:

7 **938.17 (1)** TRAFFIC, BOATING, SNOWMOBILE <sup>( )</sup> ~~AND~~ , ALL-TERRAIN VEHICLE, AND  
8 OFF-HIGHWAY VEHICLE VIOLATIONS. (intro.) Except for violations of ss. 342.06 (2) and  
9 344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when death or injury occurs,  
10 courts of criminal and civil jurisdiction have exclusive jurisdiction in proceedings  
11 against juveniles 16 years of age or older for violations of ~~ss.~~ ss. 23.33 and 23.34, of  
12 ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic regulations, as defined in s. 345.20,  
13 and nonmoving traffic violations, as defined in s. 345.28 (1). A juvenile charged with  
14 a traffic, boating, snowmobile, <sup>✓</sup> ~~or~~ all-terrain vehicle, or off-highway vehicle offense  
15 in a court of criminal or civil jurisdiction shall be treated as an adult before the trial  
16 of the proceeding except that the juvenile may be held in secure custody only in a  
17 juvenile detention facility. A juvenile convicted of a traffic, boating, snowmobile, ~~or~~  
18 all-terrain vehicle, <sup>✓</sup> or off-highway vehicle offense in a court of criminal or civil  
19 jurisdiction shall be treated as an adult for sentencing purposes except as follows:

History: 1995 a. 77, 352, 448; 1997 a. 205, 239, 258; 1999 a. 9; 2001 a. 16; 2005 a. 190, 344; 2007 a. 97; 2009 a. 103.

20 **SECTION 28.** 938.343 (9) of the statutes is amended to read:

21 **938.343 (9)** ALL-TERRAIN VEHICLE OR OFF-HIGHWAY VEHICLE SAFETY COURSE. If the  
22 violation is one under s. 23.33 or under an ordinance enacted in accordance with s.  
23 23.33 concerning the use of all-terrain vehicles, order the juvenile <sup>✓</sup> to attend an  
24 all-terrain vehicle safety course. If the violation is one under s. 23.34 or under an

1 ordinance enacted in accordance with s. 23.34<sup>✓</sup> concerning the use of off-highway  
2 vehicles, order the juvenile to attend an off-highway vehicle safety course.

3 **History:** 1995 a. 77, 352, 448; 1997 a. 84, 183, 197, 198, 205, 248; 1999 a. 9, 32, 185; 2001 a. 16; 2005 a. 344; 2009 a. 103, 367.

3 **SECTION 29. Nonstatutory provisions.**

— INSERT 27-2

4 (1) Notwithstanding the length of terms specified in section 15.347 (8) of the  
5 statutes, as created by this act, the governor shall appoint 3 of the initial members  
6 of the off-highway vehicle council for terms expiring on June 30, 2014, 3 of the initial  
7 members of the off-highway vehicle council for terms expiring on June 30, 2015, and  
8 3 of the initial members of the off-highway vehicle council for terms expiring on June  
9 30, 2016.

10 (END)

D-Note

**2011-2012 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0339/P1insRK

RNK:.....

**INSERT 2-18**

1           **SECTION 1.** 20.370 (1) (iw) of the statutes is created to read:

2           20.370 (1) (iw) *Off-highway vehicle fees*. All moneys received under s. 24.34

3           (2) (m) for state off-highway vehicle trails, for state law enforcement operations

4           related to off-highway vehicles, and for grants under s. 23.34 (10).

**INSERT 8-25**

5   no ~~ff~~ one-third for state off-highway vehicle trails, one-third for state law  
6   enforcement operations related to off-highway vehicles, and one-third for grants  
7   under sub. (10).

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0339/?ins  
MGG:.....

**Insert 2-20**

(ag) <sup>fix</sup> "Alcohol beverage" has the meaning specified under s. 125.02 (1). ✓

(am) <sup>fix</sup> "Alcohol concentration" has the meaning given in s. 340.01 (1v). ✓

**Insert 2-21**

(aw) <sup>fix</sup> "Approved public treatment facility" has the meaning specified under s. 51.45 (2) (c). ✓

**Insert 3-4**

(cf) "Controlled substance" has the meaning specified under s. 961.01 (4). ✓

(ch) "Controlled substance analog" has the meaning given in s. 961.01 (4m). ✓

(cm) "Intoxicant" means any alcohol beverage, controlled substance, controlled substance analog, or other drug or any combination thereof. ✓

(cp) <sup>fix</sup> "Intoxicated operation of an off-highway vehicle law" means sub. (4c) or a local ordinance in conformity therewith or, if the operation of an off-highway vehicle is involved, s. 940.09 or 940.25. ✓

**Insert 4-5**

(mn) "Operation" means the exercise of physical control over the speed or direction of an off-highway vehicle or the physical manipulation or activation of any of the controls of an off-highway vehicle necessary to put it in motion.

**Insert 4-11**

(og) "Purpose of authorized analysis" means for the purpose of determining or obtaining evidence of the presence, quantity, or concentration of any intoxicant in a person's blood, breath, or urine. ✓

(or) "Refusal law" means sub. (4p) (e) or a local ordinance in conformity therewith.

**Insert 4-13**

(pm) "Restricted controlled substance" means any of the following:

1. A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in subd. 1.

3. Cocaine or any of its metabolites.

4. Methamphetamine.

5. Delta-9-tetrahydrocannabinol.

**Insert 4-15**

(rm) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (2).

**Insert 12-1**

(4c) INTOXICATED OPERATION OF AN OFF-HIGHWAY VEHICLE. (a) *Operation*. 1. No person may operate an off-highway vehicle while under the influence of an intoxicant.

2. No person may engage in the operation of an off-highway vehicle while the person has an alcohol concentration above 0.0.

2m. No person may engage in the operation of an off-highway vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood. 4.

3. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., or 2m. for acts

1 arising out of the same incident or occurrence. If the person is charged with violating  
2 any combination of subd. 1., 2., or 2m., the offenses shall be joined. If the person is  
3 found guilty of any combination of subd. 1., 2., or 2m. for acts arising out of the same  
4 incident or occurrence, there shall be a single conviction for purposes of sentencing.  
5 Subdivisions 1., 2., and 2m. each require proof of a fact for conviction which the others  
6 do not require.

\*\*\*\*NOTE: For now, I have omitted language as to how convictions are to be counted  
as prior violations. See the accompanying drafter's note.

5.  
7. In an action under subd. 2m. that is based on the defendant allegedly having  
8 a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or  
9 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he  
10 or she proves by a preponderance of the evidence that at the time of the incident or  
11 occurrence he or she had a valid prescription for methamphetamine or one of its  
12 metabolic precursors, gamma-hydroxybutyric acid, or  
13 delta-9-tetrahydrocannabinol.

14 (b) *Causing injury.* 1. No person while under the influence of an intoxicant  
15 may cause injury to another person by the operation of an off-highway vehicle.

16 2. No person who has an alcohol concentration above 0.00 may cause injury  
17 to another person by the operation of an off-highway vehicle.

18 2m. No person who has a detectable amount of a restricted controlled  
19 substance in his or her blood may cause injury to another person by the operation of  
20 an off-highway vehicle.

21 3. A person may be charged with and a prosecutor may proceed upon a  
22 complaint based upon a violation of any combination of subd. 1., 2., or 2m. for acts  
23 arising out of the same incident or occurrence. If the person is charged with violating



any combination of subd. 1., 2., or 2m. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing. Subdivisions 1., 2., and 2m. each require proof of a fact for conviction which the others do not require.

\*\*\*\*NOTE: For now, I have omitted language as to how convictions are to be counted as prior violations. See the accompanying drafter's note.

4. a. In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have an alcohol concentration of more than 0.09, or did not have a detectable amount of a restricted controlled substance in his or her blood.

b. In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

(4g) PRELIMINARY BREATH SCREENING TEST. (a) *Requirement.* A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated operation of an off-highway vehicle law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

(b) *Use of test results.* A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of an off-highway vehicle law or for the purpose of deciding whether or not to request a chemical test under sub. (4p). Following the preliminary breath screening test, chemical tests may be required of the person under sub. (4p).

(c) *Admissibility.* The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under sub. (4p).

(d) *Refusal.* There is no penalty for a violation of par. (a). Subsection (13) (a) and the general penalty provision under s. 939.61 do not apply to that violation.

(4j) APPLICABILITY OF THE INTOXICATED OPERATION OF AN OFF-HIGHWAY LAW. (a) Except as provided in par. (b), the intoxicated operation of an off-highway vehicle law is applicable to all ice-bound waters of this state and to all premises held out to the public for use of off-highway vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

(b) The intoxicated operation of an off-highway vehicle law is not applicable to the highways of this state and to any other areas to which s. 346.63 (1) or (2m), s. 346.63 (2) or (6), 940.09 (1), or 940.25 or a local ordinance in conformity with s. 346.63 (1) or (2m) applies.

(4L) IMPLIED CONSENT. Any person who engages in the operation of an off-highway vehicle on those areas enumerated in sub. (4j) (a) is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under sub. (4p). Any person who

1 engages in the operation of an off-highway vehicle on those areas enumerated in sub.  
2 (4j) (a) is considered to have given consent to submit to one or more chemical tests  
3 of his or her breath, blood, or urine for the purpose of authorized analysis as required  
4 under sub. (4p).

5 (4p) CHEMICAL TESTS. (a) *Requirement.* 1. A person shall provide one or more  
6 samples of his or her breath, blood, or urine for the purpose of authorized analysis  
7 if he or she is arrested for a violation of the intoxicated operation of an off-highway  
8 vehicle law and if he or she is requested to provide the sample by a law enforcement  
9 officer. A person shall submit to one or more chemical tests of his or her breath, blood,  
10 or urine for the purpose of authorized analysis if he or she is arrested for a violation  
11 of the intoxicated operation of an off-highway vehicle law and if he or she is  
12 requested to submit to the test by a law enforcement officer.

13 2. A law enforcement officer requesting a person to provide a sample or to  
14 submit to a chemical test under subd. 1. shall inform the person of all of the following  
15 at the time of the request and prior to obtaining the sample or administering the test:

16 a. That he or she is deemed to have consented to tests under sub. (4L).

17 b. That a refusal to provide a sample or to submit to a chemical test constitutes  
18 a violation under par. (e) and is subject to the same penalties and procedures as a  
19 violation of sub. (4c) (a) 1.

20 c. That in addition to the designated chemical test under par. (b) 2., he or she  
21 may have an additional chemical test under par. (c) 1.

22 3. A person who is unconscious or otherwise not capable of withdrawing  
23 consent is presumed not to have withdrawn consent under this paragraph, and if a  
24 law enforcement officer has probable cause to believe that the person violated the  
25 intoxicated operation of an off-highway vehicle law, one or more chemical tests may

be administered to the person without a request under subd. 1. and without providing information under subd. 2.

(b) *Chemical tests.* 1. Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood, or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood, or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

2. A test facility shall designate one chemical test of breath, blood, or urine which it is prepared to administer first for the purpose of authorized analysis.

3. A test facility shall specify one chemical test of breath, blood, or urine, other than the test designated under subd. 2., which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

4. A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health services, and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this subsection. Blood may be withdrawn from a person arrested for a violation of the intoxicated operation of an off-highway vehicle law only by a physician, registered nurse, medical technologist, physician assistant, or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person, and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

5. A test facility which administers a chemical test of breath, blood, or urine for the purpose of authorized analysis under this subsection shall prepare a written

1 report which shall include the findings of the chemical test, the identification of the  
2 law enforcement officer or the person who requested a chemical test<sup>✓</sup> and the  
3 identification of the person who provided the sample or submitted to the chemical  
4 test. The test facility shall transmit a copy of the report to the law enforcement officer  
5 and the person who provided the sample or submitted to the chemical test.

6 (c) *Additional and optional chemical tests.* 1. If a person is arrested for a  
7 violation of the intoxicated operation of an off-highway vehicle law or is the operator  
8 of an off-highway vehicle involved in an accident resulting in great bodily harm to  
9 or the death of someone and if the person is requested to provide a sample or to  
10 submit to a test under par. (a) 1., the person may request the test facility to<sup>✓</sup>  
11 administer the additional chemical test specified under par. (b) 3. or may request, at<sup>✓</sup>  
12 his or her own expense, a reasonable opportunity to have any qualified person  
13 administer a chemical test of his or her breath, blood, or urine for the purpose of  
14 authorized analysis.

15 2. If a person is arrested for a violation of the intoxicated operation of an  
16 off-highway vehicle law and if the person is not requested to provide a sample or to<sup>✓</sup>  
17 submit to a test under par. (a) 1., the person may request the test facility to  
18 administer a chemical test of his or her breath or may request, at his or her own  
19 expense, a reasonable opportunity to have any qualified person administer a  
20 chemical test of his or her breath, blood, or urine for the purpose of authorized  
21 analysis. If a test facility is unable to perform a chemical test of breath, the person  
22 may request the test facility to administer the designated chemical test under par.  
23 (b) 2. or the additional chemical test under par. (b) 3.<sup>✓</sup>

24 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 23.34 (4c) (a) 4., 30.681  
25 (1) (bn), 346.63 (2m) or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the

1 person's blood at the time in question, as shown by chemical analysis of a sample of  
2 the person's blood or urine or evidence of the amount of alcohol in the person's breath,  
3 is admissible on the issue of whether he or she had an alcohol concentration in the  
4 range specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c)  
5 or an alcohol concentration above 0.0 under s. 346.63 (7) if the sample was taken  
6 within 3 hours after the event to be proved. The fact that the analysis shows that  
7 the person had an alcohol concentration of more than 0.0 but not more than 0.08 is  
8 prima facie evidence that the person had an alcohol concentration in the range  
9 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an  
10 alcohol concentration above 0.0 under s. 346.63 (7).

History: 1971 c. 40; 1973 c. 102; 1981 c. 20, 184; 1983 a. 74, 459; 1985 a. 146 s. 8; 1985 a. 331, 337; 1987 a. 3, 399; 1989 a. 105; 1991 a. 277; 1995 a. 436, 448; 1997 a. 35, 198; 2003 a. 30, 97; 2005 a. 8.

11 3. A test facility shall comply with a request under this paragraph to  
12 administer any chemical test it is able to perform.

13 4. The failure or inability of a person to obtain a chemical test at his or her own  
14 expense does not preclude the admission of evidence of the results of a chemical test  
15 required and administered under pars. (a) and (b).

16 (d) *Admissibility; effect of test results; other evidence.* The results of a chemical  
17 test required or administered under par. (a), (b), or (c) are admissible in any civil or  
18 criminal action or proceeding arising out of the acts committed by a person alleged  
19 to have violated the intoxicated operation of an off-highway vehicle law on the issue  
20 of whether the person was under the influence of an intoxicant or the issue of  
21 whether the person had alcohol concentrations above specified levels or a detectable  
22 amount of a restricted controlled substance in his or her blood. Results of these  
23 chemical tests shall be given the effect required under s. 885.235. This subsection

*the following*

1 does not limit the right of a law enforcement officer to obtain evidence by any other  
2 lawful means.

3 (e) *Refusal*. No person may refuse a lawful request to provide one or more  
4 samples of his or her breath, blood, or urine or to submit to one or more chemical tests  
5 under par. (a). A person shall not be considered to have refused to provide a sample  
6 or to submit to a chemical test if it is shown by a preponderance of the evidence that  
7 the refusal was due to a physical inability to provide the sample or to submit to the  
8 test due to a physical disability or disease unrelated to the use of an intoxicant.  
9 Issues in any action concerning violation of par. (a) or this paragraph are limited to

10 1. Whether the law enforcement officer had probable cause to believe the  
11 person was violating or had violated the intoxicated operation of an off-highway  
12 vehicle law.

13 2. Whether the person was lawfully placed under arrest for violating the  
14 intoxicated operation of an off-highway vehicle law.

15 3. Whether the law enforcement officer requested the person to provide a  
16 sample or to submit to a chemical test and provided the information required under  
17 par. (a) 2. or whether the request and information was unnecessary under par. (a) 3.

18 4. Whether the person refused to provide a sample or to submit to a chemical  
19 test.

20 (4t) REPORT ARREST TO DEPARTMENT. If a law enforcement officer arrests a person  
21 for a violation of the intoxicated operation of an off-highway vehicle law or the  
22 refusal law, the law enforcement officer shall notify the department of the arrest as  
23 soon as practicable. ,

24 (4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN OFF-HIGHWAY VEHICLE  
25 WHILE UNDER INFLUENCE OF INTOXICANT. A person arrested for a violation of sub. (4c)

✓ ✓ ✓ ✓  
1 (a) 1. or 2. or a local ordinance in conformity therewith or sub. (4c) (b) 1. or 2. may  
2 not be released until 12 hours have elapsed from the time of his or her arrest or unless  
3 a chemical test administered under sub. (4p) (a) 1. shows that the person has an  
4 alcohol concentration of 0.05 or less, but the person may be released to his or her  
5 attorney, spouse, relative, or other responsible adult at any time after arrest.

6 (4z) PUBLIC EDUCATION PROGRAM. (a) The department shall promulgate rules  
7 to provide for a public education program to: *do all of the following*

8 1. Inform off-highway vehicle operators of the prohibitions and penalties  
9 included in the intoxicated operation of an off-highway vehicle law.

10 2. Provide for the development of signs briefly explaining the intoxicated  
11 operation of an off-highway vehicle law.

12 (b) The department shall develop and issue an educational pamphlet on the  
13 intoxicated operation of an off-highway vehicle law to be distributed, beginning  
14 within 6 months after the effective date of this paragraph .... [LRB inserts date], to  
15 persons issued off-highway vehicle registration certificates under subs. (2).

16 **Insert 25-6**

17 **SECTION 1.** 885.235 (1m) of the statutes is amended to read:

18 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m)  
19 or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the  
20 time in question, as shown by chemical analysis of a sample of the person's blood or  
21 urine or evidence of the amount of alcohol in the person's breath, is admissible on the  
22 issue of whether he or she had an alcohol concentration in the range specified in s.  
23 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol  
24 concentration above 0.0 under s. 23.34 (4c) (a) 2. or 346.63 (7) if the sample was taken  
25 within 3 hours after the event to be proved. The fact that the analysis shows that



1 the person had an alcohol concentration of more than 0.0 but not more than 0.08 is  
2 prima facie evidence that the person had an alcohol concentration in the range  
3 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an  
4 alcohol concentration above 0.0 under s. 23.34 (4c) (a) 2. or 346.63 (7).

**History:** 1971 c. 40; 1973 c. 102; 1981 c. 20, 184; 1983 a. 74, 459; 1985 a. 146 s. 8; 1985 a. 331, 337; 1987 a. 3, 399; 1989 a. 105; 1991 a. 277; 1995 a. 436, 448; 1997 a. 35, 198; 2003 a. 30, 97; 2005 a. 8.

5 **Insert 27-2**

6 **SECTION 2.** 940.09 (3) of the statutes is amended to read:

7 940.09 (3) An officer who makes an arrest for a violation of this section shall  
8 make a report as required under s. 23.33 (4t), 23.34 (4t), 30.686, 346.635 or 350.106.

**History:** 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436; 1997 a. 237, 295, 338; 1999 a. 32, 109; 2001 a. 16, 109; 2003 a. 30, 97; 2009 a. 100.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

PI  
LRB-0339/?dn  
RNK/MGG: jf

Date

This draft is in preliminary form. Because the drafting instructions for this proposal were given to me in the form of draft language, and because that language doesn't conform in some respects to our drafting conventions or to the manner in which our statutes are structured, I have structured this draft in a manner that is similar to the way the laws regulating all-terrain vehicles in Wisconsin (including registration procedures) are structured. I discussed this issue with John Schnorr of the Wisconsin Off-Highway Vehicle Association and he concurred with this approach. Please note the following comments and issues:

X 1. From the instructions for this draft, and from the meeting at your office, I have understood that your intention is to allow an OHV to be operated on public land *only* on designated trails. This means that, for example, an OHV could not be operated on frozen waters which, if navigable when not frozen, are public waters. I have also understood from the instructions that an OHV must be registered only for the purpose of operation on an OHV trail. Thus, the draft does not require an OHV to be registered if it is operated elsewhere (unless it is a Class A OHV that must be registered under ch. 341). However, under this draft, certain restrictions that apply to the operation of an OHV generally, for example equipment requirements, apply to the operation of an OHV on any property, public or private. If these basic assumptions are incorrect, please let me know and I will redraft, accordingly.

X 2. I did not draft certain parts of the proposed language because that language was inconsistent with the instructions given at the meeting at your office in which we discussed this proposal. For example, the proposal includes language authorizing an off-highway vehicle (OHV) to cross a public road right-of-way in certain circumstances, but at our meeting Mr. Schnorr indicated that there was no need for any provisions authorizing an OHV to cross a right-of-way. If, after reviewing the draft and the drafting instructions, you find that there are provisions from the proposal that still need to be added to the draft, please let me know and I will include them in the next version of the draft.

X 3. Your instructions included requirements for both civil penalties (forfeitures) and a criminal penalty (misdemeanor). I have assumed, for purposes of this draft, that you wanted to provide for civil penalties only with regard to violations that do not involve the intoxicated operation of an OHV.

stays  
in

4. Under current law, s. 20.370 (3) (at), stats, appropriates amounts remitted to DNR from various safety instruction program fees for the purpose of those programs. That is, the fees from all of these programs are not specifically identified for use by the given program for which the fee was remitted. I have included the safety program fees under this draft in this appropriation. Is this O.K. or do you want a separate appropriation for these OHV safety program fees?

5. Please note that under this draft, the forfeiture procedure under s. 23.50 to 23.85 in current law (including citation procedure) will apply to OHV violations. Is this O.K.?

6. Your instructions requested that the forfeitures collected for OHV violations be used to fund OHV enforcement laws and environmental restoration. The Wisconsin constitution requires all forfeitures to be credited to the school fund. If you want to provide funding for the requested purposes, you may want to impose a surcharge in addition to the forfeiture amount and then direct that the surcharge be used for the purposes requested.

7. Your instructions included language that specifically prohibits destruction of wetlands. Because current law already prohibits damage to natural resources and prohibits the operation of a motor vehicle in or on a navigable water (see ss. 23.095 and 30.29), I did not include this language in this draft.

8. The provisions with regard to helmet requirements in this draft are based on those in the laws regulating ATVs. Is this O.K.?

9. The instructions included a requirement to create an OHV Council. The instructions also included a requirement that the OHV council promulgate certain rules. Under Wisconsin law, councils do not have rule-making authority. If you wish to authorize the OHV Council to promulgate rules, you may wish to create an OHV Board rather than an OHV Council.

10. In addition to the issues raised above, the draft contains embedded notes that raise additional issues. Please review those notes as well.

If you have any questions, please feel free to call me.

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

I have done the drafting of the OWI provisions. In reviewing these please note the following:

1. I have not included any specific penalties for operating while intoxicated. Please look at s. 23.33 (13) and let me know if you want to include any of those provisions that relate to intoxicated operation.

2. I have not included language to have violations under the OWI provisions count as violations for purposes of the regular motor vehicle OWI laws. This will be included in a later version of this draft once the other OWI penalties are finalized.

X 3. The scope of the "intoxicated operation of an off-highway vehicle law" applies to more areas than just trails designated by DNR. Sees. 23.34 (4j). This raises the inference that the legal operation of an off-highway vehicle that is registered with DNR, as opposed to DOT, is not limited to DNR designated trails. This may need redrafting once this issue as to where on "public property" these DNR registered vehicles may be operated is clarified.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0339/P1dn  
RNK/MGG:kjf:rs

February 7, 2011

This draft is in preliminary form. Because the drafting instructions for this proposal were given to me in the form of draft language, and because that language doesn't conform in some respects to our drafting conventions or to the manner in which our statutes are structured, I have structured this draft in a manner that is similar to the way the laws regulating all-terrain vehicles in Wisconsin (including registration procedures) are structured. I discussed this issue with John Schnorr of the Wisconsin Off-Highway Vehicle Association and he concurred with this approach. Please note the following comments and issues:

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